

DIAGEO NORTH AMERICA, INC. v. MEXCOR, INC. and EJMV INVESTMENTS, LLC

Case No. 4:13-cv-856 (DH) (SWS)

**Exhibit 84 to Diageo North America,
Inc.'s Motion For Summary Judgment
As To Its Trademark Infringement,
Unfair Competition, And False
Designation Of Origin Claims**

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

DIAGEO NORTH AMERICA, INC.,

Plaintiff and Counterdefendant,

v.

MEXCOR, INC. and
EJMV INVESTMENTS, LLC,

Defendants and Counterclaimants.

Case No. 4:13-cv-856 (DH) (SWS)

JURY DEMANDED

**DECLARATION OF ABBY WISE IN SUPPORT OF DIAGEO NORTH
AMERICA, INC.'S MOTION FOR SUMMARY JUDGMENT AS TO ITS
TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND FALSE
DESIGNATION OF ORIGIN CLAIMS**

I, Abby Wise, declare under penalty of perjury as follows:

1. I am the Brand Marketing Director for Crown Royal® whisky at Diageo North America, Inc. (“Diageo”). I respectfully submit this declaration in support of Diageo’s Motion For Summary Judgment As To Its Trademark Infringement, Unfair Competition, And False Designation of Origin Claims (“Diageo’s Motion”). I have personal knowledge of the facts set forth in this declaration, unless otherwise stated.

2. My responsibilities include overseeing nearly every aspect of the Crown Royal® brand, including brand strategy and plans and execution of these plans. I work closely with the Crown Royal® brand’s advertising and promotion

agencies such as Grey Group, Colangelo, and DigitasLBI to market Crown Royal® whisky. I also have overseen the development and launch of line extensions of Crown Royal® whisky, such as Crown Royal® Maple Finished Canadian whisky.

[REDACTED]

[REDACTED] My responsibilities give me significant knowledge about the strength of the CROWN ROYAL® and Purple Bag® marks, consumer perceptions of these marks, marketplace conditions for the North American Whisky category, and sales, advertising, and promotion of Crown Royal® whisky.

3. From my review of documents concerning the history of Crown Royal® whisky, I know that it has been sold for over 60 years, beginning in 1954 and that the Purple Bag® was introduced in 1964.

Advertising And Promotion Of The CROWN ROYAL® And Purple Bag® Marks

4. My review of Crown Royal® whisky's historical advertising reveals that since its introduction in 1964, the iconic Purple Bag® has been prominently featured in Crown Royal® whisky advertisements. Often, the advertisements play on the Purple Bag®, as the true and correct copies of historical advertisements attached to Diageo's Motion as Exhibits 2-6 demonstrate.

5. Indeed, the iconic Purple Bag® is at the core of the Crown Royal® brand's identity. For example, Diageo has run a promotion inviting Crown

Royal® whisky adorers to submit pictures of what they created using the purple bag. Crown Royal® whisky consumers create all sorts of things from the purple bags, including quilts and slippers. In at least one instance, a Crown Royal® whisky fan reupholstered his car with purple bags! Around the holidays, Diageo runs a promotion in which consumers can request a personalized message be embroidered on their purple bags. And the Crown Royal® Heroes Project encourages legal drinking age adults to stuff camouflage-patterned purple bags with snacks and treats that Diageo sends to military personnel serving overseas.

6. In addition to the promotions involving the well-known Purple Bag®, Crown Royal® whisky has been extensively advertised and promoted in various media in the United States, including through radio, television, print publications, billboards, and the internet. Indeed, both the CROWN ROYAL® and Purple Bag® marks have been used in connection with sponsoring sporting events like the “Crown Royal® 400” at the Indianapolis Motor Speedway, and various rodeo and football-related events. Diageo has also sponsored Matt Kenseth’s NASCAR team. There is even a Crown Royal® whisky bar at Cowboys Stadium in Dallas.

7. Diageo’s advertising and promotional expenditures on behalf of Crown Royal® whisky are truly substantial, and for the three-year period that ended on June 30, 2012, exceeded [REDACTED] in the past twelve years, Diageo has spent well over [REDACTED] advertising and promoting Crown Royal® whisky.

Indeed, Diageo spends close to [REDACTED] per year advertising and promoting Crown Royal® whisky.

Crown Royal® Whisky's Overwhelming Success

8. Diageo's advertising and promotion of Crown Royal® whisky has made it the leading brand of Canadian whisky, the second-best selling North American Whisky by volume in the United States, behind only Jack Daniels, and one of the most successful spirits. Only Smirnoff vodka, Captain Morgan Spiced rum, Bacardi Superior rum, and Jack Daniels Tennessee whiskey outsold Crown Royal® whisky in 2011. Put differently, Crown Royal® whisky sells more whisky than other famous brands like Jim Beam Kentucky Straight Bourbon Whiskey, Johnnie Walker Scotch Whisky, or Jameson Irish Whiskey.¹

9. Indeed, between July 1, 2002 and June 30, 2013² Diageo sold at least [REDACTED] cases of Crown Royal® whisky in the United States, totaling [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹ As the leading brand of Canadian whisky, Crown Royal® whisky is sold in a wide variety of trade channels, including bars, clubs, restaurants, liquor stores, mass retail outlets (e.g., Wal-Mart and Target), club retail outlets (e.g., Sam's Club and Costco), grocery stores, and other retail locations, as well as at sports games, concerts, and other entertainment events.

² Diageo's fiscal year begins on July 1 and ends on June 30 of the following year.

[REDACTED]

Actual Confusion Caused By Mexcor's Crown Royal® Knockoff Whisky

10. I believe that Crown Royal® whisky's overwhelming popularity and success inspired Mexcor, Inc. and EJMV Investments, LLC (collectively "Mexcor") to design packaging for their Canadian whisky that imitates Crown Royal® whisky's trade dress by, among other things, prominently featuring the word "crown" on its bottles, using a cloth drawstring bags, and making the word "crown" the most prominent word on that cloth drawstring bag.

11. Mexcor's packaging for its [State] CROWN Club whisky is so similar to Crown Royal® whisky that shortly after South Carolina CROWN Club whisky was introduced, I began receiving reports from our sales team that consumers believed South Carolina CROWN Club was affiliated with Crown Royal® whisky. Accordingly, I led a team that looked into South Carolina CROWN Club.

[REDACTED]

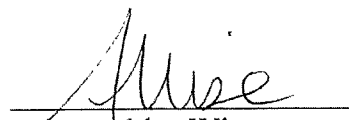
[REDACTED]

12. Diageo was very concerned about the confusion being created by South Carolina CROWN Club whisky, and there were a number of internal emails concerning Mexcor's activities. [REDACTED]

[REDACTED]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 19, 2014 in New York, New York.


Abby Wise

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to Fed. R. Civ. P. 5(b), on this 19th day of May, 2014, a true and correct copy of the foregoing Declaration of Abby Wise In Support Of Diageo North America, Inc.'s Motion For Summary Judgment As To Its Trademark Infringement, Unfair Competition, And False Designation Of Origin Claims was served upon the following counsel of record in this matter via ECF:

William D. Raman
Steve A. Fleckman
Joseph M. Leak
Fleckman & McGlyn, PLLC
515 Contress Avenue, Suite 1800
Austin, Texas 78701

William A. Worthington
Strasburger & Price, LLP
909 Fannin Street, Suite 2300
Houston, Texas 77010

/s/ Benjamin M. Rattner
Benjamin M. Rattner